

# The Department of Community Planning & Development

City Hall, Lynchburg, VA 24504 434-455-3900

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**To:** Planning Commission

**From:** Planning Division

**Date:** May 10, 2006

**Re:** **Zoning Ordinance Amendments, Section 35.1-23, Supplementary Regulations (building projections, setbacks, etc), Section 35.1-24, Accessory Buildings and Structures, Section 35.1-56, Cluster dwellings, cluster development with townhouse lots for sale and/or condominiums.**

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## I. PETITIONER

City of Lynchburg, Planning Division, 900 Church Street, Lynchburg, VA 24504

**Representative(s):** Tom Martin, AICP, City Planner, 900 Church Street, Lynchburg, VA 24504

Rob Fowler, Zoning Administrator, 900 Church Street, Lynchburg, VA 24504

## II. LOCATION

The proposed amendments would be Citywide.

**Property Owner:** N/A

## III. PURPOSE

The purpose of the Zoning Ordinance Amendments are to relax setback requirements for multi-family, townhouses, commercial and industrial developments when they are located adjacent to residentially zoned property not being used for a residential use, such as a school, hospital or church. The amendments would also remove the requirement for accessory structures having to be attached by a breezeway when located within the side yard.

## IV. SUMMARY

- The proposed amendments would relax setback requirements for multi-family, townhouse, commercial and industrial developments when located to residentially zoned land that is not being used for a residential use.
- Amendments are in compliance with the *Comprehensive Plan 2002-2020* which recommends ensuring opportunities for existing businesses to expand in appropriate locations. **(pg7.5)**
- Amendments are in compliance with the *Comprehensive Plan 2002-2020* which recommends ensuring flexibility in zoning codes by identifying site, building, buffer, design and other code provisions that restrict development potential. **(pg7.8)**
- Amendments are in compliance with the *Comprehensive Plan 2002-2020* which recommends promoting the construction of new housing and rehabilitation of existing housing to satisfy the demands of an increasingly diverse local and regional housing market. **(pg10.12)**

## The Planning Division recommends adoption of the proposed Zoning Ordinance Amendments.

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## V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* supports the proposed amendments in that it recommends ensuring opportunities for existing businesses to expand in appropriate locations and ensuring flexibility in zoning codes by identifying site, building, buffer, design and other code provisions that restrict development potential. The relaxing of the setback requirements would ensure that development could occur in the appropriate locations by not requiring substantial setbacks when the adjacent uses are not residential.

The *Comprehensive Plan* also recommends promoting the construction of new housing and rehabilitation of existing housing to satisfy the demands of an increasingly diverse local and regional housing market. It is obvious that homeowners today desire accessory buildings such as garages. The current Zoning Ordinance requirement for breezeways connecting these accessory buildings

when located in the side yard setback is making this increasingly difficult for a variety of circumstances such as topography.

2. **Zoning.** The vast majority of the property fronting the Fifth Street Corridor is zoned B-5, General Business District. It is the recommendation of the plan that an overlay district be established to facilitate appropriate development in the corridor.
3. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the proposed rezoning.
4. **Surrounding Area.** N/A
5. **Site Description.** N/A
6. **Proposed Use of Property.** N/A
7. **Traffic and Parking.** N/A
8. **Storm Water Management.** N/A
9. **Emergency Services.** N/A
10. **Impact.** The proposed Zoning Ordinance Amendments would further the implementation of the City's *Comprehensive Plan* by creating more opportunity for expansion of existing construction of new developments where appropriate. The relaxing of the setback requirements would not remove the additional setback requirement for existing conforming residential uses from multi-family, townhouses, commercial and industrial developments or their expansion.
11. **Technical Review Committee.** N/A

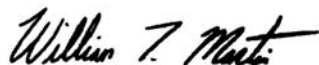
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**VI. PLANNING DIVISION RECOMMENDED MOTION(s):**

**Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending;**

- **Section 35.1-23, Supplementary Regulations (building, projections, setbacks, etc) q, Industrial Districts adjacent to Residential Districts.**
- **Section 35.1-23, Supplementary Regulations (building, projections, setbacks, etc) r, Commercial Districts adjacent to Residential Districts.**
- **Section 35.1-23, Supplementary Regulations (building, projections, setbacks, etc) s, Multi-Family Residential Districts adjacent to Single-Family or Two-Family Residential Districts.**
- **Section 35.1-24, Accessory Buildings and Structures, a, Accessory building attached to the main building.**
- **Section 35.1-56, Cluster dwellings, cluster development with townhouse lots for sale and/or condominiums, b9, perimeter yards.**

This matter is respectfully offered for your consideration.



William T. Martin, AICP  
City Planner

pc: Mr. L. Kimball Payne, III, City Manager

Mr. Walter C. Erwin, City Attorney  
Mr. J. Lee Newland, Director of Engineering  
Capt. Michael L. Thomas, Fire Marshal  
Lt. Danny R. Marks, Lynchburg Police Department Field Operations Bureau  
Capt. Todd Swisher, Lynchburg Police Department North Division  
Capt. J.P. Stokes, Lynchburg Police Department East Division  
Capt. Al Thomas, Lynchburg Police Department South Division  
Mr. Gerry L. Harter, Traffic Engineer  
Mr. Robert Drane, Building Commissioner  
Mr. Keith Wright, Zoning Official  
Mr. Robert S. Fowler, Zoning Official  
Mrs. Erin B. Hawkins, Environmental Planner

## **VII. ATTACHMENTS**

### **1. Zoning Ordinance Amendments**

**Sec. 35.1-23. Supplementary regulations (building projections, setbacks, etc.).**

(a) Terraces. A paved terrace shall not be considered to be a building or structure in determination of yard requirements of lot coverage; provided, however, that such terrace is without roof, awnings, screens, walls, parapets or other forms of enclosure and is not more than three (3) feet above grade. Such terrace, however, may have a guard railing, wall or fence not over four (4) feet high, and shall not project into any yard to a point closer than five (5) feet from any lot line.

(b) Porches. Uncovered porches, decks, or covered but not enclosed porches and decks, may project not more than ten (10) feet beyond the front or rear walls of a building into a required front or rear yard. An exception is on the street side of corner lots, in which case they may project not more than ten (10) feet beyond the side walls of a building into a required side yard, provided the side yard has a width equal to or exceeding the depth of the required front yards on the side street. Any two (2) story or enclosed porch, or one having a roof capable of being enclosed, shall be considered a part of the building in the determination of the size of yard or amount of lot coverage.

(c) Projecting horizontal architectural features. Architectural features, such as windowsills, belt courses, chimneys, cornices, eaves or bay windows, may project not more than three (3) feet into any required yard, but not closer than five (5) feet to any lot line. The sum of any bay window projections on any wall shall not exceed one-fourth (1/4th) of the length of said wall.

(d) Projecting features above the roof line. The height limitations of the zoning ordinance shall not apply to flag poles, church spires, belfries, cupolas and domes not used for human occupancy, nor to chimneys, ventilators, skylights, water tanks, bulkheads or similar features, radio and television antennas for the use of residents of dwellings in apartments, and necessary mechanical appurtenances usually carried above the roof level. Such a feature, however, shall be erected only to a height necessary to accomplish the purpose it is intended to serve, but in no case more than fifteen (15) feet above its lowest point of contact with the roof. The total area covered by such features shall not exceed in cross-sectional area fifteen (15) per cent of the area of the section of roof upon which they are located. Such features as water tanks, cooling towers and bulkheads shall be enclosed within walls of material and designed in harmony with the main walls of the building on which they are located.

(e) Fire escapes. Open fire escapes may extend into any required yard not more than five (5) feet; provided, however, that such fire escapes shall not be closer than five (5) feet at any point to any lot line.

(f) Parapet walls. A parapet wall may extend not more than five (5) feet above the roof of the building on which it is located or five (5) feet above the height limit for the district in which it is located.

(g) Fences and walls. The yard requirements of the zoning ordinance shall not be deemed to prohibit any otherwise lawful fence or wall if each fence and/or wall does not exceed four (4) feet in height in front yards and eight (8) feet in height in side and rear yards in residential districts or ten (10) feet in other districts and if it does not conflict with standards in this section except on a corner lot. On a corner lot, no fence and/or wall shall exceed four (4) feet in height in the required side or rear yard abutting a street when a front yard is required for that block of the side street.

(h) Corner lots. On a corner lot the required side yard abutting a street shall be at least equal to a required front yard for that street. A rear yard shall be provided on each corner lot. The division of inspections shall designate which yard is the rear yard.

(i) Interior lots with double frontage. Interior lots having a frontage on two (2) streets shall have a front yard on both streets as provided herein, except where all lots are designed or designated to face a given street or as may be established by existing dwellings, all of which face the same street, in which cases rear yard requirements may be applied to the street on which the dwellings do not face.

(j) Visibility at intersections. On any corner lot on a dedicated street, no building, fence, wall, hedge or other structure or planting more than three (3) feet in height other than posts, columns or trees separated by not less than six (6) feet from each other, shall be erected, placed or maintained within the triangular area formed by the intersecting curb or edge of pavement lines and a straight line joining points of said lines fifty (50) feet from such intersection. The height of three (3) feet shall be measured above the road surface at the nearest edge of the pavement. This paragraph shall not apply to existing trees provided that no branches are located closer than six (6) feet to the ground.

(k) Future street widening. On any street where a street widening plan designating future right-of-way lines has been officially adopted, the yards required by the zoning ordinance shall be measured from such lines rather than the existing street lines; and where no yard is otherwise required, a yard is hereby required extending back to the future right-of-way line.

(l) Limited access highway. On any limited access highway (including ramps) there shall be provided a yard or setback line of fifty (50) feet from the right-of-way line; and no building, sign, billboard or structure of any type shall be located or erected nearer than fifty (50) feet to such right-of-way line.

(m) Exception for existing alignment of building. Where there are existing buildings in a block, the required front yard shall be the same depth as the average established for such existing building, provided that no front yard shall be required to exceed sixty (60) feet in depth, and further provided that when a setback line is shown on a subdivision plat recorded after the effective date of this section, no front yard shall be required to exceed the setback line on the recorded plat.

(n) Courts. The least horizontal dimension of any court, at any level, shall not be less than the height of any vertical wall forming part of such court, but not less than twenty (20) feet in any case.

(o) Increased side yard width. Where a structure exceeds fifty (50) feet in length along a side yard, the required side yard shall be increased one (1) foot in width for each ten (10) feet of additional building length or fraction thereof.

(p) Private recreational facilities. Private recreational facilities such as swimming pools, tennis courts and basketball courts permitted as accessory uses located on residentially zoned land, shall not be located in any front yard and shall have the following setbacks:

(1) If accessory to a multifamily use, the edge of the facility shall be located not less than ten (10) feet from any lot line.

(2) In the event that such facility is located less than fifty (50) feet from any lot line, it shall be screened by a continuous fence at least four (4) feet in height, supplemented with a strip of densely planted trees or shrubs at least four (4) feet high at the time of planting along such lot line adjacent to such facility.

**(q) Industrial districts adjacent to residential districts. In all instances where an industrial district is adjacent to a residential district, there shall be established in the industrial district a screened yard consisting of a vegetative buffer at least four (4) feet high at planting and ten (10) feet wide at maturity. ~~between the two (2) districts.~~**

When an industrial district and a conforming residential ~~district~~ use abut, there shall be required a one-hundred (100) foot setback, ~~and a vegetative buffer at least four (4) feet high and ten (10) feet wide at the lot line.~~

(r) Commercial districts adjacent to residential districts. In all instances where a commercial district is adjacent to a residential district, there shall be established in the commercial district a screened yard consisting of a vegetative buffer at least four (4) feet in height at time of planting and at least ten (10) feet in width at maturity. ~~between the two (2) districts.~~ When a commercial district and a conforming residential ~~district~~ use abut, there shall be required a fifty (50) foot setback. ~~and a vegetative buffer at least four (4) feet in height at the time of planting and at least ten (10) feet in width at maturity.~~

(s) Multifamily residential districts adjacent to single-family or two-family residential districts. In all instances where a multifamily district is adjacent to a single-family or two-family residential district, there shall be established in the multifamily district a screened yard consisting of a vegetative buffer at least four (4) feet in height at time of planting and at least ten (10) feet in width at maturity. ~~between the two (2) districts.~~ When a multifamily district and a conforming single-family or two-family ~~district~~ use abut, there shall be required a fifty (50) foot setback. ~~and a vegetative buffer at least four (4) feet in height at the time of planting and at least ten (10) feet in width at maturity.~~

(t) Parking lot landscaping. All parking lots shall landscape an area equivalent to at least five (5) per cent of the total area of the parking lot. The landscaping material shall be at least four (4) feet in height at the time of planting and at least five (5) feet in width at maturity. The location of such landscaping shall be on the property line of the street on which the property fronts or in such location as is approved by the city.

(u) Planting material for buffering.

(1) All planting material to be used as a buffer shall be at least four (4) feet in height at the time of planting and a species of live evergreen as approved by the parks and beautification division of the city as being appropriate for screening purposes.

(2) The arrangement and spacing of such planting material shall be provided in such a manner as to effectively screen the activities of the subject lot, as determined by the division of inspections.

(3) All such planting specifications shall be filed with the approved plan for the use of the lot.

(4) To assure that required planting shall be properly maintained throughout the continuance of the use of the lot, the city may require a bond or guarantee, payable to the City of Lynchburg, in such amount and for such period of time as the city may designate.

(v) Dedicated street as portion of required buffer. When a dedicated street separates two (2) districts requiring a screened buffer and an additional setback, one fourth (1/4th) of the width of the dedicated street may be used in calculating the additional required setback.

(w) Vehicular access. Vehicular access points to all uses shall conform to the "Standard Entrance Policy" of the city.

(x) A driveway on a residential flag lot, as defined in Section 24.1-5. Words and terms, shall be located a minimum of five (5) feet from all lot lines, unless approval has been obtained for a shared driveway with one (1) of the adjacent lots.

(y) Inaccessibility of public services. In order to protect the health, safety, morals and general welfare of the public the city may restrict or deny a rezoning request due to the inaccessibility of water and/or sewer lines.

(z) Special permit for temporary outdoor promotional attractions. Temporary outdoor promotional attractions incident to a shopping center or other business establishment, such as auto, boat or home shows, pony and hay rides, acrobatic acts and the like, may be permitted by special permit subject in each case to approval by the city manager or his duly designated official and to the following conditions:

(1) Such a permit shall be issued only for use within the B-3, B-4 or B-5 districts.

(2) A permit for any such attraction shall not be issued for a longer period than fifteen (15) days, but may be renewed by the city manager or his duly designated official with or without modification; or may be revoked.

(3) A charge may be made for admission to or use of any such attraction.

(4) No such attraction shall be located within less than one hundred fifty (150) feet of the nearest lot line of any adjacent dwelling.



(5) Lights, music, amplifiers and other noise shall be controlled so as not to be a nuisance to adjacent residents.

(6) The hours of operation shall not extend beyond the normal business hours of the business establishments to which such attractions are incident.

(7) Any other conditions or requirements in each case that may be deemed necessary by the city manager or his duly designated official to protect the peace, health, safety, morals and welfare of adjacent residents and the general public.

(8) In the event the city manager or his duly designated official refuses to issue a permit or revokes a permit previously issued for said promotional attractions, the applicant for such a permit shall have the right of appeal to the city council to review the action of the city manager or his duly designated official. The decision of the city council with regard to such permit shall be final. (Ord. No. O-78-352, 12-12-78; Ord. No. O-81-063, § 1, 4-14-81; Ord. No. O-85-140, § 1, 6-11-85; Ord. No. O-89-248, § 1, 9-12-89; Ord. No. O-90-048, 2-13-90)

**Sec. 35.1-24. Accessory buildings and uses.**

**(a) Accessory building ~~attached~~ with similar materials of main building. If any accessory building is constructed with like or similar materials as the to a main building, ~~including attachment by means of a breezeway or a roofed passageway~~, it shall comply in all respects to the requirements of this ordinance applicable to the main building. All other accessory buildings shall comply to the requirements for such buildings in the schedule of regulations.**

(b) Dwellings in accessory buildings. Any accessory building on the same lot with a main residence building shall not be used for residential purposes except for guests or for domestic employees (who are employed on the premises) by the owners or tenants of the main building, and neither shall such a building contain a kitchen or kitchen facilities.

(c) Accessory use. Accessory buildings shall be located in rear yards only and may occupy not more than thirty per cent (30%) of the required rear yard. On through lots, accessory buildings shall be prohibited in all yards—front, side and rear. On interior lots, accessory buildings may be erected on the lot line; provided, the fire resistive requirements of the building code are complied with. On corner lots, accessory buildings shall be located as far as possible from the side street line but not nearer to such street line than the setback line required in the district, and where such corner lot requires a side yard abutting the side street, the accessory building shall be located a distance from the rear lot line equal to the required side yard dimension for the abutting lot to the rear of the main building on the corner lot. (Ord. No. O-78-352, 12-12-78)

**Sec. 35.1-56. Cluster dwellings, cluster development with townhouse lots for sale and/or condominiums.**

(a) Cluster dwellings permitted by conditional use permit in R-1 and R-2 districts shall meet the following requirements:

(1) Net density on the site shall not exceed that permitted in the district. No land with a slope over twenty-five (25) per cent shall be included in the calculation of this density.

(2) In all instances where a multi-family district is adjacent to a single-family residential district, there shall be in the multi-family district a landscaped setback between the two (2) districts. When a multi-family district and a single-family district abut on a side yard, rear yard or required front yard, there shall be required a setback equal to at least twice the required side yard of the abutting single-family district and a vegetative buffer at least four (4) feet in height at the time of planting and at least five (5) feet in width at maturity.

(3) Regulations governing yards, courts, and other features in Section 35.1-23 shall be complied with.

(4) Applicable regulations of the subdivision ordinance of the City of Lynchburg shall apply.

(5) Where clustering of dwellings is employed, the following regulations shall apply:

Land not placed in individual lots shall be dedicated to the City of Lynchburg or placed in the ownership and control of a homeowners' association capable of providing adequate maintenance.

(b) A cluster development with townhouse lots for sale shall meet the following minimum standards:

(1) Lot area: Each townhouse shall be located on a lot of not less than one thousand two hundred (1,200) square feet in area.

(2) Unit width: A minimum width of sixteen (16) feet per lot shall be maintained.

(3) Front yard: There shall be a minimum ten (10) foot front yard (area between front door and front of lot, or parking area, or other common area).

(4) Side yard: There shall be a side yard of not less than sixteen (16) feet in width at each end of a group of units (not to be shared between units).

(5) Rear yard: There shall be a rear yard with a depth of not less than twenty-five (25) feet for each unit (not to be shared between units).

(6) Lay-out: Facades must change front yards so that not more than three (3) abutting units will have the same front yard setback. No more than nine (9) townhouses shall be attached in a group.

(7) Height regulations: Townhouse units shall comply with the standards of height regulations specified in the permitted zoning district of development.

(8) Common areas: Walkways must be provided from each unit to public or common areas within the project such as refuse collection, recreation, and parking.

**(9) Perimeter yards: Each townhouse development shall have a perimeter yard on the rear and side property lines of the total site equal to at least twenty-five (25) feet, which may include the required side and rear yards for each townhouse, except where the development is within or abuts a conforming single-family ~~district~~ use in which case the perimeter yard shall be at least fifty (50) feet. The required front yard for the zoning district in which the development is located shall apply for the townhouse development along the front property line of the total site which may include the required front yard for each townhouse.**

(10) Required yard measurement: All required yards for townhouse development shall be measured outwardly from the buildings toward the property lines.

(11) Parking areas: All parking areas, driveways and/or common sidewalks and/or other common areas must be in addition to the required one thousand two hundred (1,200) square feet of lot area, and, further, no parking areas, driveways, common sidewalks and/or other common areas will be permitted in any required yards.

(c) Management and ownership of common open space, property and facilities in townhouse cluster developments.

(1) All common open space, properties, and facilities shall be preserved for their intended purpose as expressed in the approved plan. The

developer shall provide for the establishment of a homeowners' association or corporation of all individuals or corporations owning property within the cluster development to ensure the maintenance of all common open space, properties and facilities.

(2) All privately owned common open space shall continue to conform to its intended use and remain as expressed in the site plan through the inclusion in all deeds of appropriate restrictions to ensure that the common open space is permanently preserved according to the site plan. The deed restrictions shall run with the land and be for the benefit of present as well as future property owners and shall contain a prohibition against partition.

(3) All common open space as well as public and recreational facilities shall be specifically included in the development schedule and be constructed and fully improved by the developer.

(4) The corporation or homeowners' association established to own and maintain common open space properties and facilities shall conform to the following requirements, and the developer shall obtain the approval of the city attorney as to acceptability of incorporation documents:

- a. The developer must establish the homeowners' association or corporation prior to the final approval, recording and sale of any lot.
- b. Membership in the association or corporation shall be mandatory for all residents within the cluster development and the homeowners' association or corporation shall not discriminate by race, creed or sex in its members or shareholders.
- c. The association or corporation documents shall set forth the purposes of the permanent organization under which common ownership is to be established; how it shall be governed and administered; the provisions made for permanent care and maintenance of the common property including necessary bonds when required by the city; and the method of assessing the individual property for its share of the cost of administering and maintaining such common property.
- d. The incorporation document shall set forth the extent of common interest held by the owner of each individual parcel in the tract held in common with others.
- e. All property in a cluster development shall remain under a single entity ownership of a developer or a group of developers, and shall not be

leased or sold unless provision is made which ensures participation by the properties leased or sold in the retention and maintenance of common open space and community facilities. A certificate of compliance, indicating that such arrangements have been made, shall be issued by the agent of the city prior to the sale or lease of the property by the developer.

(d) Cluster development of condominiums for sale. All condominiums for sale shall meet the requirements below:

(1) Comply with the standards specified in the Code of Virginia, 1950, as amended.

(2) Area regulations of the permitted zoning district.

(3) Yard regulations of the permitted zoning district. (Ord. No. O-78-352, 12-12-78; Ord. No. O-79-330, § 1, 11-13-79; Ord. No. O-80-082, § 1, 4-8-80; Ord. No. O-85-140, § 1, 6-11-85)